

C.A. No. 14-50342  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FRANCISCO JAVIER GASCA-RUIZ

Defendant-Appellant.

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JOINT MOTION FOR CLARIFICATION OF THE COURT'S ORDER  
AND EXTENSION OF TIME TO FILE BRIEFS IN RESPONSE

Pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 27-1, the parties respectfully move the Court for clarification of the issue(s) to be argued en banc and to file simultaneous en banc briefing. The reasons for this motion are noted in the parties' declaration.

DATED: November 17, 2015

LAURA E. DUFFY  
United States Attorney

s/Peter Ko  
PETER KO  
Assistant U.S. Attorney  
Chief, Appellate Section

United States Attorney's Office  
880 Front Street, Room 6293  
San Diego, CA 92101-8893  
Telephone: (619) 546-6968  
Attorneys for Plaintiff-Appellee  
United States of America

s/ Vincent J. Brunkow  
VINCENT J. BRUNKOW

Federal Defenders of San Diego, Inc.  
225 Broadway Street  
San Diego, CA 92101  
Telephone: (619) 234-8467  
Attorneys for Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of California  
Honorable Gonzalo P. Curiel, District Judge

The parties declare as follows:

1. These consolidated appeals raise two main issues: 1) whether Mr. Gasca's allocution rights were violated during his supervised release sentencing proceeding; and 2) whether the district court improperly imposed a "bodily injury" increase under U.S.S.G. § 2L1.1(b)(7)(A).

2. The cases were set for oral argument on September 3, 2015. On July 29, 2015, this Court ordered the cases submitted on the briefs. On October 5, 2015, Chief Judge Thomas entered an order that a *sua sponte* call for initial hearing *en banc* had been made, but supplemental briefing by the parties was not required "at this time on the question of whether this case should be heard *en banc*." On

November 12, 2015, Chief Judge Thomas entered an order that these cases be heard *en banc*, and the matter was placed on oral argument calendar during the week of January 11, 2016.

3. Due to the unique procedure of this case, where there has been no oral argument, no petition by either party to hear the case *en banc*, and no decision or requested briefing from the Court, it is unclear to the parties what issue(s) formed the basis of this Court's decision to hear the cases *en banc*. To better assist the full Court at oral argument and in making an ultimate decision, the parties ask for clarification of the issue(s) on which the Court is focused and to provide briefing as to the parties' position.

4. The parties would be able to file simultaneous briefs within 21 days of any order granting clarification and further briefing.

5. Based on the above, the parties respectfully request clarification of the issue(s) to be heard *en banc*, and to submit simultaneous briefs within 21 days of granting this motion.

Dated: November 17, 2015

s/ Peter Ko  
PETER KO  
Assistant U.S. Attorney

s/ Vincent J. Brunkow  
VINCENT J. BRUNKOW  
Attorney for Appellant

**Certificate of Service When All Case Participants Are CM/ECF Participants**

I hereby certify that on November 17, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*s/ Vincent J. Brunkow*

**VINCENT J. BRUNKOW**